



IN THE  
**Supreme Court of the United States**

OCTOBER TERM, A. D. 1945.

---

**No.**

---

FRANK JOHN CERONE,

*Petitioner,*

vs.

UNITED STATES OF AMERICA,

*Respondent.*

---

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH  
CIRCUIT.

---

**PETITION FOR WRIT OF CERTIORARI.**

---

Petitioner Frank John Cerone respectfully shows to the  
Court as follows:

That he is a resident of the County of Cook, and State  
of Illinois, and is a citizen of the United States, born at  
Chicago, Illinois on April 12, 1912.

That he was sentenced by the District Court of the  
United States for the Northern District of Illinois, East-

ern Division, on the 9th day of March, 1945 to five years to run consecutively with and follow the sentence imposed on him on March 7th, 1945 in 44 CR 457 and a fine of \$10,000.00 (Tr. 185). charging a violation of Section 311, Title 50, Appendix USCA.

That on appeal from said judgment the Circuit Court of Appeals for the Seventh Circuit on the 30th day of June, 1945, affirmed said judgment; and on the 23rd day of July, 1945, denied a rehearing of said cause; and, on July 24th, 1945, entered an order staying the mandate pursuant to Rule 25 of that court.

#### **SUMMARY STATEMENT OF MATTER INVOLVED.**

On the 30th day of June, 1944, the grand jury returned an indictment in the District Court charging George Sam Aloisio with evading services in the armed forces of the United States and William Aloisio and Frank John Cerone with aiding and abetting him in the following manner: William Aloisio and Frank Cerone by the offer and promise of \$500.00 as a present and emolument to certain United States Naval personnel, assigned to service at the Induction Station at Chicago, Illinois, persuaded and induced them to make certain false, untrue and fraudulent entries upon the record of examination, commonly called the "buck sheet," of the defendant George Sam Aloisio, at the Induction Station while George Sam Aloisio was being examined as to his physical and mental fitness for services in the armed forces of the United States, by means of which said false, untrue and fraudulent entries, George Sam Aloisio was rejected for service in the land or naval forces of the United States: that George Sam Aloisio did, while being examined and having possession of his record of exam-

ination, called the "buck sheet," hand and present said record of examination, called the "buck sheet" to said United States Naval personnel in order that they might make said false, fraudulent and untrue entries thereon, all of said defendants, well knowing that said entries were false, fraudulent and untrue and then and there intending by means of said false, fraudulent and untrue entries to procure the rejection of George Sam Aloisio for service in the land or naval forces of the United States.

The defendants pleaded not guilty, were tried by a jury and found guilty.

Motions for directed verdict, motions for new trial and arrest of judgment were denied with exceptions, and a bill of exceptions was presented.

### **STATEMENT OF FACTS.**

Four indictments under the same statute were returned, as follows:

1. 44 CR 454, U. S. v. George N. Alex and Frank Cerone.
2. 44 CR 455, U. S. v. Charles Bartoli and Frank Cerone.
3. 44 CR 456, U. S. v. William and George Aloisio and Frank Cerone.
4. 44 CR 457, U. S. v. James and Frank Cerone.

The government elected to proceed first with the trial of 44 CR 457, followed with 44 CR 456, which is the subject matter of the present petition, with the remaining two indictments continued until the October Term 1945.

Petitioners did not take the witness stand. The evidence of the government may be briefly stated as follows: Chief

Petty Officer Stephenson was assigned to the induction center at Chicago with duties of reviewing buck sheets and assigning selectees to the various branches of the armed service. He met Frank Cerone in March, 1944, at a tavern and after several conferences Frank Cerone suggested Stephenson try to formulate a plan to have selectees rejected (Tr. 43); thereafter, by his own efforts, Stephenson secured the rejection of Bartoli and was paid \$1,000.00 by Frank Cerone (Tr. 45). On March 27th or 28th Stephenson contacted Chief Petty Officer Curran, assigned to the same induction center, whose duties were to induce qualified selectees to enter radar training (Tr. 71). Stephenson told Curran of the first rejection and wanted Curran to assist him in securing further rejections (Tr. 72). Curran never had any intention of entering into the securing of rejections, delayed for a time to think it over, and immediately reported the matter to his superior officers, including Stephenson's confession as to Bortoli (Tr. 73, 74). Agents from the Federal Bureau of Investigation were called in. Curran was ordered by his superior officers to work under the direction of Agents, and thereafter was in constant touch and under orders of the Agents (Tr. 89). Curran and Stephenson then formulated a new plan for securing rejection of selectees (Tr. 45, 46, 60, 61, 62), which consisted of having the selectee meeting Curran and Stephenson one day prior to their examination when selectees were taken to the induction center, where under surveillance of Agents, they were put through a rehearsal and instructed as to what to do on the day of their examination (Tr. 87). It was the plan of Stephenson and Curran to reject selectees on a mental basis and they secured a "Rejected by the Armed Forces" stamp, a "Psycho-neurosis Mixed Type" stamp and a list of medical words, which if

indorsed on the buck sheet, would show a mental unfitness (Tr. 74, 75).

On April 13th, 1944, the first rejection under this plan, that of George Alex, was procured by Curran writing on his buck sheet the medical findings constituting him unfit for service. Curran also stamped thereon the stamp of "Psycho-neurosis Mixed Type" and the stamp of "Rejected by the Armned Forces" (Tr. 89). For which Stephenson received from Frank Cerone \$1,000.00, paying \$500.00 to Curran. On April 23, 1944, Stephenson confessed and informed the Agents of every fact and detail of the Charles Bartoli and George Alex cases and also the plan with Curran. Stephenson agreed with the Agents to follow their orders and directions (Tr. 102, 104, 105).

On May 12, 1944, the rejection of George Sam Aloisio was procured by Curran writing on his buck sheet the medical finding constituting him unfit for service. Curran also stamped thereon the stamp "Rejected by the armed forces," and wrote thereon "Pre-psychotic state, schizoid type." (Tr. 78) For which rejection Stephenson received \$500.00 delivering \$250.00 to the Agents and \$250.00 to Curran. (Tr. 79)

As in the previous rejection of George Alex, George Sam Aloisio was, previous, to his examination, rehearsed, instructed and conducted through the induction center by Stephenson and Curran, under the surveillance of the Agents who took moving pictures. (Tr. 110)

As in the previous rejection of George Alex, George Sam Aloisio, under order of the Agents was formally notified of his rejection by his draft board, (Tr. 35) and was subsequently arrested.

### **Jurisdiction.**

This Court has jurisdiction to review this cause under Section 240 of Judicial Code, Title 28, Section 347, and Section 688, Title 18, Criminal Code and Criminal Procedure, and Rules 11 and 12 of Criminal Procedure of this Court. (USCA Pocket Edition to Title 18.)

### **Question Presented.**

There is one question presented to this Court, whether the acts performed by the law enforcement officers can be imputed and charged to the petitioners.

### **Reasons Relied Upon for the Allowance of the Writ.**

So far as the petitioner is informed this case presents for the first time whether law enforcing agents may actually perform the essential elements of an offense and impute and charge them to the accused.

Petitioners in the Circuit Court of Appeals by leave of Court filed a consolidated brief and that Court properly filed a consolidated opinion. However, the contentions of the petitioners, John Cerone and Frank Cerone, are not mentioned in the opinion and the petition for rehearing urging the same contentions was denied.

### **Specification of Errors.**

The trial court erred in not directing a verdict of not guilty; in overruling a motion for a new trial; and overruling motion in arrest of judgment.

The Circuit Court of Appeals erred in affirming the judgment.

WHEREFORE it is respectfully requested this petition for a writ of certiorari be allowed and the writ be granted to review the judgment of the Circuit Court of Appeals for the Seventh Circuit.

FRANK JOHN CERONE,

By *Gerald T. Wiley*  
*Vern E. Lamm*  
*Eugene A. Japp*  
 Attorneys for Petitioner